

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of .
CHARLES W. RUFF . HUDALJ 89-1354-DB
Respondent .
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Gerard P. Martin, Esquire
For the Respondent

William Johncox, Esquire
For the Department

Before: WILLIAM C. Cregar
Administrative Law Judge

INITIAL DETERMINATION

Statement of the Case

This proceeding arose as a result of a proposal by the Department of Housing and Urban Development ("the Department" or "HUD") dated April 14, 1989, to debar Charles W. Ruff from further participation in HUD programs for a period of three (3) years from the date of his prior suspension, September 9, 1988. The Department's actions are based upon Respondent Ruff's conviction in the United States District Court for the District of Maryland, for violating 18 U.S.C. Sec. 371 (conspiracy to commit fraud against the United States). Respondent had been previously suspended on September 9, 1988, from further participation in HUD programs pending final action after the indictments were returned. The Department duly notified Respondent of the proposed debarment. His request for a hearing was received by this office on May 9, 1989. Because the proposed action is based on a conviction, the hearing was limited under Departmental Regulation, 53 Fed. Reg. 30,049 (1988) and 53 Fed. Reg. 19,184 (1988) (to be codified in 24 C.F.R. Sec. 24.313 (b) (2) (ii) to submission of documentary evidence and written briefs.

This matter being ripe for decision, I now make the following findings and conclusions based upon the record submitted:

Findings of Fact

Respondent is the owner of Charles W. Ruff and Co., Inc., a roofing and sheet metal contractor in Baltimore, Maryland. On December 16, 1989, the Respondent pleaded guilty to Count 1 of an indictment charging him with conspiring with two other persons to submit false bids on a contract for the replacement of mansard roofs at the Newtown Twenty Project, a low income housing development in Annapolis, Maryland, in violation of Title 18, U.S.C. Sec. 371.

Mr. Ruff was sentenced to three years imprisonment. All but four months was suspended. This part of the sentence was to be served in a half way house.

Respondent was also placed on probation for two years after release, fined \$15,000, and ordered to perform 200 hours of community service. In addition, the Respondent has agreed with the Annapolis Housing Authority to make restitution in the amount of \$90,000.

Discussion

The Department relies upon the causes stated in 24 C.F.R. Sec. 24.305 (a) (1) (2) and (3). These regulations provide, inter alia, for debarment upon conviction for a crime involving fraud, obtaining or performing a private agreement or transaction, price fixing, bid rigging, and falsification.¹ HUD contends that a three year debarment is necessary to protect the public interest and to deter misconduct by other participants in HUD programs.²

The Respondent agrees with the government that he is a "participant" in HUD programs and is, therefore, subject to debarment; that there is cause for debarment; and that a debarment for some period is necessary to protect the public interest. Respondent's sole contention is that by virtue of having cooperated with Federal authorities for over a year, he is entitled to a reduction in the three year debarment requested by the government. He points out that since he presently is attempting to make restitution in the amount of \$90,000 to the Annapolis Housing Authority, it is in the public interest to have his company back on its feet as soon as possible. He also argues that to hold otherwise would result in a mechanical application of the regulations and an incentive to cooperate with the

government would be eliminated. HUD contends that Respondent was convicted of a very serious offense, and received a substantial sentence. The Department also opines that his cooperation was motivated by a desire to avoid prison and does not constitute proof that the public is any less at risk than it would be if the Respondent had not cooperated.

Debarment is a sanction which may be invoked by HUD as a measure for protecting the public by ensuring that only those qualified as "responsible" are allowed to participate in HUD programs. 24 C.F.R. Sec. 24.115(a); Stanko Packing Co. v. Bergland, 489 F.Supp. 947, 949 (D.D.C. 1980); Roemer v. Hoffman, 419 F. Supp. 130, 131 (D.D.C. 1976). "Responsibility" is a term of art used in government contract law. It encompasses the projected business risk of a person doing business with HUD. This includes his integrity, honesty, and ability to perform.

The primary test for debarment is present responsibility although a finding of present lack of responsibility can be based upon past acts. Schlesinger v. Gates, 249 F.2d 111 (D.C. Cir. 1957); Roemer, supra. It is clear that the Respondent evidences a clear lack of present responsibility based upon the conviction for conspiracy to commit a fraud against the United States. This indicates a fundamental lack of business integrity and honesty and substantially increases HUD's risk in dealing with him. Accordingly, Respondent's conviction for conspiracy is cause for debarment.

I have considered the arguments of both the Department and the Respondent and have concluded that Respondent's cooperation with Federal authorities is properly considered a mitigating factor. Such cooperation is clearly in the public interest. A routine, mechanical application of a three year rule which fails to recognize this type of cooperation would tend to discourage such behavior and would be contrary to the very public interest which underlies HUD's authority to debar. See 24 C.F.R. Sec. 24.115 (b). I have concluded that a debarment for a period of two and one-half years from the date of the imposition of the suspension is appropriate and necessary to insure that the seriousness with which the Department views the Respondent's conduct would not be misconstrued and that the public trust and fisc will not be subjected to risk in the future.

¹ Similar regulations were in effect at the time of the commission of the offenses resulting in Respondent's conviction. 24 C.F.R. Sec. 24.6 (a) (1983)

² HUD regulations provide that debarments will generally not exceed three years in duration. 24 C.F.R. Sec. 24.320. Although not required by HUD regulations, the "usual" length of debarments proposed by the Department is also three years.

Conclusion and Order

Upon consideration of the public interest and the entire record in this matter, I conclude and determine that good cause exists to debar Charles W. Ruff from further participation in primary covered transactions and lower tier covered transactions as either a principal or participant at HUD or throughout the Federal Government and from participating in procurement contracts for period of two and one-half years from September 9, 1988, the date of the issuance of the suspension.

William C. Cregar
Administrative Law Judge
U.S. Department of Housing
and Urban Development
451 7th Street, S.W., #2156
Washington, D.C. 20410

Dated: July 21, 1989